

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of:)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	
v.)	CSC-392
Mediacom Communications Corporation)	
)	
Petition for Order to Show Cause)	

MEMORANDUM OPINION AND ORDER

Adopted: July 27, 2004

Released: July 29, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Rancho Palos Verdes Broadcasters, Inc., licensee of television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California ("KXLA"), filed a petition for order to show cause requesting that the Commission require Mediacom Communications Corporation ("Mediacom") to comply with the decision in *Rancho Palos Verdes Broadcasters, Inc. v. Mediacom Communications Corporation* and immediately test KXLA's signal strength at the principal headend of Mediacom's Sun City, California cable system.¹ An opposition to this petition was filed on behalf of Mediacom to which KXLA replied.²

II. DISCUSSION

2. KXLA states that in its *Reconsideration Order*, the Commission granted Mediacom's request to condition the Bureau's earlier grant of KXLA's must carry complaint on KXLA's ability to deliver an adequate signal to Mediacom's principal headends at Ridgecrest and Sun City.³ KXLA argues that for the Sun City system Mediacom designated a facility that is incapable of receiving an over-the-air signal from the Mt. Wilson antenna farm from which KXLA transmits its signal.⁴ Moreover, KXLA asserts that Mediacom denied KXLA access to the mountain receive antenna it employs to receive other Mt. Wilson signals, thereby evading its must carry obligations imposed by the *Reconsideration Order*.⁵

3. KXLA states that, pursuant to the *Reconsideration Order*, it reached an agreement with

¹17 FCC Rcd 544 (2002) ("*Reconsideration Order*"). See also *Rancho Palos Verdes Broadcasters, Inc. v. Mediacom Communications Corporation*, 16 FCC Rcd 15830 (2001) ("*Complaint Order*").

²We note that Mediacom raised the issue that KXLA's petition was procedurally defective because it was not accompanied by a filing fee. However, because petitions for order to show cause do not require a filing fee, we do not need to address this issue.

³Petition at 2, citing *Rancho Palos Verdes Broadcasters, Inc.*, 17 FCC Rcd at 545.

⁴*Id.* at 2.

⁵*Id.*

Mediacom to test its signal on February 5, 2002. KXLA states that the Sun City headend site where its technical engineer was taken to perform the test was positioned in such a way that a 1,000-foot mountain peak stands between it and Mt. Wilson obstructing any possible line of site reception.⁶ KXLA points out, however, that Mediacom's representative stated that the system also maintained a receive antenna on a tower on the intervening mountain which is capable of and used for line-of-sight reception for Mt. Wilson based stations.⁷ KXLA states that although Mediacom receives 18 other stations from Mt. Wilson at this mountaintop receive antenna it has denied KXLA access to the receive antenna site for the purpose of conducting its signal strength tests.⁸ KXLA argues that informal measurements it took from a ridge approximately five miles from this receive antenna show that KXLA does in fact deliver a good quality signal to the Sun City cable system in accordance with the requirements of Section 76.55(c)(3) of the Commission's rules.⁹

4. KXLA argues that, in order to comply with its must carry obligations, Mediacom should be required to provide KXLA the same access to its mountain receive antenna that it provides to other local broadcast stations in the Los Angeles DMA.¹⁰ KXLA notes that in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, the Commission stated that "for broadcast stations not currently carried on the cable system, to the extent that the cable operator is able to do so, the signal level shall be determined based on measurements made with generally accepted equipment that is currently used to receive signals of similar frequency range, type or distance from the principal headend."¹¹ KXLA asserts that Mediacom is violating not only the *Reconsideration Order*, but the Commission's rules as well in requiring KXLA to deliver a "good quality" signal to a receive facility other than its mountain receive antenna site.

5. In opposition, Mediacom argues that KXLA's petition should be dismissed on its merits. It points out that commercial television broadcast stations are entitled to assert mandatory carriage rights against a cable system located within its market only if the station delivers an adequate quality signal to the cable system's principal headend.¹² Mediacom asserts that it successfully argued in opposition to KXLA's must carry complaint that the station did not deliver a good quality signal to its Sun City cable system.¹³ The Bureau confirmed this fact in its *Reconsideration Order* when it ordered Mediacom to commence carriage of KXLA only at such time as the station delivered an adequate quality signal to its principal headend.¹⁴ In its current petition, Mediacom notes that KXLA does not now assert that it can deliver a good quality signal, only that it could do so if allowed to test its signal at a remote receive antenna site used by Mediacom. Mediacom states that because of the mountainous terrain surrounding the Sun City cable system, it uses a remote receive site on Gavalon Peak three miles from the system's principal headend site to receive certain other television broadcast signals originating from the Mt. Wilson antenna farm.¹⁵ Once received, these signal are transported from Gavalon Peak to the headend

⁶*Id.* at Exhibit A.

⁷*Id.* at Exhibit B, Declaration of Mr. David Rickmers and Exhibit C.

⁸*Id.* at 3 and Exhibit D.

⁹*Id.* at 3 and Exhibit B. *See also* 47 C.F.R. § 76.55(c)(3).

¹⁰*Id.* at 4.

¹¹*Id.*, citing 8 FCC Rcd 4142, 4145 (1993) ("*Clarification Order*").

¹²*Id.*, citing 47 U.S.C. § 534(h)(1)(B)(iii) and 47 C.F.R. § 76.55(c)(3).

¹³*Id.* at 3.

¹⁴17 FCC Rcd at 545.

¹⁵Opposition at 3.

site via microwave transmission.¹⁶

6. Although KXLA suggests that because of the reception of other stations at Gavalon Peak it should be allowed to conduct its signal measurements at that site, Mediacom argues that the use of a separate site does not negate KXLA's failure to deliver a good quality signal to Sun City's principal headend. Mediacom points out that the *Clarification Order* specifically states that "the designated principal headend [of the system] is the appropriate location for [signal strength] measurements."¹⁷ The Commission's rules also state that there can be only one location that is the designated principal headend of a cable system.¹⁸ Mediacom states that in this case the Sun City principal headend site is the location that most directly serves the system's subscribers, contains all of the signal processing equipment and is most near the system's geographic center.¹⁹ Mediacom states that its mountain receive site contains no signal distribution or signal processing equipment and is located over three miles from the principal headend and geographic center of Sun City and most of its residents.²⁰ Mediacom argues further that while it acknowledges that cable operators have a duty to cooperate with television stations seeking mandatory carriage, the Commission has explicitly held that cable operators are not required to render extraordinary cooperation when the issue is the measurement of a good quality signal.²¹ Mediacom notes that several cases have held that such cooperation did not extend to the measurement of signals at locations other than the principal headend.²² Mediacom concludes that it is irrelevant that it employs extraordinary measures so that other broadcast stations can be received at Gavalon Peak and transported via microwave to its principal headend. While a cable operator may provide such extraordinary assistance, Mediacom argues that it is discretionary, not mandatory.²³

7. In response, KXLA maintains that Mediacom's refusal to receive KXLA's signal at the mountain receive antenna site constitutes a total evasion of its must carry obligations and as such violates both the Communications Act and the Commission's rules.²⁴ By designating its principal headend at a different location than its Gavalon Peak site, KXLA argues, Mediacom apparently hopes to maintain the discretion to pick and choose among the local broadcast stations it wishes to carry.²⁵ While this might be permissible if Mediacom only used its Gavalon Peak site to pick up a few outlying signals, KXLA asserts that the instant case differs significantly from those cases cited by Mediacom in which the Commission upheld the discretionary nature of a cable operator's decision to receive a signal at a location other than its principal headend.²⁶ That difference, states KXLA, is whether the designated facility receives the majority of signals transmitted by the system.²⁷ In this case, Mediacom receives the vast majority of local broadcast signals at its mountain receive antenna.²⁸ KXLA concludes that in singling out KXLA and

¹⁶*Id.*

¹⁷*Id.* at 4, citing 8 FCC Rcd at 4145.

¹⁸*Id.*, citing 47 C.F.R. § 76.5(pp).

¹⁹*Id.*, citing *Channel 5 Public Broadcasting v. WestStar Cable*, 10 FCC Rcd 8215, 8216 (1995).

²⁰*Id.* at 4-5.

²¹*Id.* at 5, citing *Paxson Salt Lake License, Inc. v. Sonic Cable Television*, 15 FCC Rcd 7361, 7365 (2000); *Paxson Salt Lake License, Inc. v. Sonic Cable Television*, 13 FCC Rcd 9434 (1998).

²²*Id.*, citing *Jasas Corporation v. TCI Cablevision*, 14 FCC Rcd 7063 (2000); *Channel 5*, 10 FCC Rcd at 8216.

²³*Id.* at 6, citing *Channel 5*, 10 FCC Rcd at 8216.

²⁴*Id.* at 3.

²⁵*Id.*

²⁶*Id.*, citing *Paxson Salt Lake City License*, 15 FCC Rcd at 7365.

²⁷*Id.* at 4, citing *Channel 5*, 10 FCC Rcd at 8215.

requiring it to deliver a “good quality” signal to a receive facility other than the mountain receive antenna site, Mediacom is engaging in precisely the type of inequitable treatment the must carry rules were designed to overcome.

8. We do not agree with KXLA’s argument that because Mediacom receives other stations’ signals at its Gavalon Peak receive site that we have the discretion to allow KXLA to conduct signal measurements at that location. Both the statute and the Commission’s rules expressly require that a broadcast station deliver a good quality signal to the principal headend of the cable system to be entitled to must carry rights.²⁹ Based on the record before us, we believe that Mediacom has properly designated its principal headend site, and the fact that it receives a majority of its broadcast signals at a remote secondary site does not change this designation.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, that the petition for order to show cause filed on behalf of Rancho Palos Verdes Broadcasters, Inc. **IS DENIED**.

10. This action is taken pursuant to authority delegated by Section Section 0.283 of the Commission’s Rules.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

(...continued from previous page)

²⁸*Id.* at 4 n. 2.

²⁹*See* 47 U.S.C. § 534(h)(1)(iii); *see also Clarification Order*, 8 FCC Rcd 4142, 4143 (1993).